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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHYMAR ESTRADA,

Defendant.

CASE NO. 1:22-CR-00149-JLT-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: August 3, 2022

TIME: 1:00pm

COURT: Hon. Sheila K. Oberto

This case is set for status conference on August 3, 2022. On May 13, 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of California until further notice and allows district judges to continue all criminal matters. Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020, . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and other General Orders were entered to address public health concerns related to COVID-19 (for example, General Order 614—recently extended by General Order 652).

1 Although the General Orders and declarations of emergency address the district-wide health
 2 concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
 3 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record
 4 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
 5 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 6 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 7 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 8 findings on the record "either orally or in writing").

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 10 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
 11 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
 12 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 13 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
 14 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
 15 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 16 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

17 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
 18 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 19 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 20 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 21 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
 22 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 23 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 24 exclude time following the September 11, 2001, terrorist attacks and the resultant public emergency).
 25 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 26 by the statutory rules.

27 In light of the societal context created by the foregoing, this Court should consider the following
 28 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-

1 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
2 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
3 pretrial continuance must be “specifically limited in time”).

4 **STIPULATION**

5 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
6 through defendant’s counsel of record, hereby stipulate as follows:

7 1. By previous order, this matter was set for status on August 3, 2022.

8 2. By this stipulation, defendant now moves to continue the status conference until October
9 19, 2022, and to exclude time between August 3, 2022, and October 19, 2022, under 18 U.S.C.
10 § 3161(h)(7)(A), B(iv) [Local Code T4].

11 3. The parties agree and stipulate, and request that the Court find the following:

12 a) The government has represented that the discovery associated with this case has
13 been provided. The government is aware of its ongoing discovery obligations.

14 b) Counsel for defendant desires additional time to confer with his client about a
15 possible resolution, to review discovery, and to otherwise prepare for trial.

16 c) Counsel for defendant believes that failure to grant the above-requested
17 continuance would deny him/her the reasonable time necessary for effective preparation, taking
18 into account the exercise of due diligence.

19 d) The government does not object to the continuance.

20 e) In addition to the public health concerns cited by the General Orders and
21 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
22 ends-of-justice delay is particularly apt in this case because counsel or other relevant individuals
23 have been encouraged to telework and minimize personal contact to the greatest extent possible.
24 It will be difficult to avoid personal contact should the hearing proceed.

25 f) Based on the above-stated findings, the ends of justice served by continuing the
26 case as requested outweigh the interest of the public and the defendant in a trial within the

27 _____
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 original date prescribed by the Speedy Trial Act.

2 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
3 et seq., within which trial must commence, the time period of August 3, 2022 to October 19,
4 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
5 T4] because it results from a continuance granted by the Court at defendant's request on the basis
6 of the Court's finding that the ends of justice served by taking such action outweigh the best
7 interest of the public and the defendant in a speedy trial.

8 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
9 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
10 must commence.

11 IT IS SO STIPULATED.

12 Dated: July 13, 2022

PHILLIP A. TALBERT
United States Attorney

14 /s/ JESSICA A. MASSEY
15 JESSICA A. MASSEY
16 Assistant United States Attorney

17 Dated: July 13, 2022

18 /s/ YAN SHRAYBERMAN
19 YAN SHRAYBERMAN
Counsel for Defendant
JOSHYMAR ESTRADA

20 **ORDER**

21 IT IS SO ORDERED.

22
23 DATED: 7/14/2022

24 *Sheila K. Oberto*
25 Hon. Sheila K. Oberto
United States Magistrate Judge